



2026:0001:10411

HIGH COURT OF JUDICATURE AT ALLAHABAD

MATTERS UNDER ARTICLE 227 No. - 5810 of 2026

Smt Nidhi Choudhary

.....Petitioner(s)

Versus

State of U.P. and Another

.....Respondent(s)

Counsel for Petitioner(s)

: In Person

Counsel for Respondent(s)

: C.S.C.

Court No. - 5

HON'BLE VIKAS BUDHWAR, J.

1. Supplementary affidavit filed today is taken on record.
2. Heard petitioner in person and Sri Sanjay Kumar Singh, learned Additional Chief Standing Counsel for the State.
3. In view of the order which is being proposed to be passed, notices are not being issued to the second respondent.
4. The petitioner herein had earlier approached this Court while filing First Appeal No. 425 of 2025 along with First Appeal No. 1135 of 2025 which came to be decided on 28.01.2026, order whereof is quoted hereinunder.-

"1. Two appeals are before us. Both have been filed by appellant, who was wife in the marriage dissolved on ex-parte judgment dated 28th October, 2024 of the Family Court. First Appeal no.425 of 2025 is appeal against the ex-parte judgment. It was filed on delay, condoned and admitted. First Appeal no.1135 of 2025 is appeal against subsequent judgment dated 8th September, 2025 of the Family Court rejecting appellant's application for condonation of delay and setting aside the ex-parte judgment, inter-alia, on the ground of embarrassment since, the earlier appeal already stood admitted and we had called for the record. Mr. Sudhanshu Pandey, learned advocate appears on behalf of appellant and Mr. Dileep Kumar Pandey, learned advocate for respondent.

2. We think that dealing with First Appeal no.425 of 2025 will lead to disposal of both appeals. Said appeal was heard by us on 22nd May, 2025 on appellant appearing in

person. We reproduce below paragraphs 3 to 6 from order made that day.

"3. It appears from impugned judgment, parties got married on 22nd October, 2023. We infer so because claim in respondent's petition was to declare the marriage dated 22nd October, 2023, as null and void. It further appears, it was second marriage for both parties. Respondent was successful in obtaining finding from the Family Court that appellant had not duly obtained dissolution of the marriage from her first husband, one Naru Gopal Singh. The judgment was made ex parte against appellant on the Family Court having earlier on 15th October, 2024 found sufficiency of service.

4. Before the Family Court, there were several documents tendered by respondent. They are, inter alia, photos of wedding of appellant and her alleged former husband- Naru Gopal Singh, their rent agreement executed in year 2013, documents relating to several cases under Information Technology Act, 2000 and provisions in Indian Penal Code, 1860, pending in Court of Metropolitan Magistrate, Calcutta as well as Tis Hazari Court, Delhi. Based on the documentary evidence, the Family Court concluded in favour of respondent, to declare the marriage void.

5. We reproduce below paragraph-6 from our order dated 15th May, 2025.

"Appellant is relying on decree dated 5th July, 2023 dissolving her prior marriage on mutual consent in context of her subsequent marriage to respondent having been declared null and void. We require English translation of impugned judgment to be made by the Registry on or before adjourned date."

Appellant, at that hearing, had handed up judgment dated 5th July, 2023 as also decree of said date made by the Principal Judge, Family Court, West District, Tis Hazari Court, Delhi in H.M.A no.1942 of 2023 (Manish Ahuja and Nidhi Ahuja @ Nidhi Mallik) under section 13-B(2) of Hindu Marriage Act, 1955.

6. It appears from said judgment dated 5th July, 2023, appellant and said Manish Ahuja had a daughter from their marriage. There was agreement for permanent alimony at Rs.30 lakhs to be paid to appellant. There is no mention of aforesaid cases under Information Technology Act, 2000 nor Indian Penal Code, 1860. It follows, Manish Ahuja and Naru Gopal Singh are separate persons."

3. On the subsequent appeal filed and the record of the case earlier called for, we perused the order-sheet regarding service. We see that the process server said, he

found appellant outside the house. She took the summons, read the contents and returned it to him. There followed paper publication and then ex-parte hearing and the judgment. Appellant thereafter said, on discovery she protested against the statement made by the process server. It is sufficient to say that the discovery was prior to 15th May, 2025, when she had moved her delayed appeal against the impugned ex-parte judgment. We have no reason to disbelieve the process server. This goes against appellant.

4. Nevertheless, it will appear from reproduced paragraphs 3 to 6 of order dated 22nd May, 2025 that the Family Court while passing impugned ex-parte judgment found the facts to be, for both parties it was second marriage. Appellant has produced decree dated 5th July, 2023 of concerned Family Court dissolving her first marriage. It was prior to solemnization of marriage with respondent. He, however, alleged and obtained impugned ex-parte judgment on contention appellant's first marriage was subsisting, when she got married to him. Appellant's conduct in not receiving the summons can be mitigated by award of costs. She needs an opportunity to adduce evidence. Rule 33 in order XLI, Code of Civil Procedure 1908 gives ample power to the appellate Court to make, inter-alia, any order or to make such further or other decree or order as the case may require.

5. Impugned ex-parte judgment dated 28th October, 2024 is set-aside in appeal. The matrimonial case is restored to the Family Court on direction upon appellant to pay Rs.10,000/- as cost to respondent. The payment must be tendered to Registrar General along with website copy of this order. It is to be made by 16th February, 2026. Omission to tender the payment by 16th February, 2026 will cause automatic recall of this order with consequence of dismissal of both appeals. Registry will communicate this judgment after 16th February, 2026 and by 23rd February, 2026, to the Family Court.

6. Both the appeals are disposed of.

7. Mr. Sudhanshu Pandey submits, the Family Court at Bulandshahar does not have jurisdiction. Both parties are presently residing at Gautam Buddh Nagar, Uttar Pradesh. Upon payment of cost for the restoration, appellant will be at liberty to either take up the point of jurisdiction as a contention or apply for transfer, as she may be advised."

5. Prayer in the present petition is for a direction to the Principal Family Judge, District Bulandshahr to decide the proceedings in the Civil Suit

No. 1181 of 2024 under the provisions contained under Section 21B of the Hindu Marriage Act and to conclude the trial without granting unnecessary adjournments.

6. In the opinion of the Court, once a statute provided for timeline as encapsuled under Section 21B of the Hindu Marriage Act then the proceedings are to be decided with most expedition. Bearing in mind the aforesaid factual situation, the court below is directed to conclude the proceedings as per mandate contained under Section 21B of the Hindu Marriage Act without granting unnecessary adjournments and in case adjournments are granted, the same should be on exceptional basis that should be in those circumstances which are beyond control and comprehension of the parties and the adjournment so granted should not be beyond 10 days at a stretch.

7. With the aforesaid observation, the petition stands **disposed of**.

(Vikas Budhwar,J.)

May 6, 2026
Rajesh